

GARBARINI & SCHER, P.C
William G. Scher, Esq.
Attorneys for Defendant
DCM ERECTORS, INC.
432 Park Avenue South, 9th Floor
New York, New York 10016
(212) 689-1113
wscher@garbarini-scher.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

Averil C. Morrison, Delisa Williams, Janenne
Gonzalez, Delroy Danvers, Garfield Danvers,
Individually and on behalf of all others similarly
situated,

Docket No.: 12 CV 301(FB)(RER)

**ANSWER TO FIRST AMENDED
COMPLAINT**

Plaintiffs,

-against-

International Union of Operating Engineers Local 14-
14B, AFL-CIO, Bay Crane Service Inc., DCM Erectors,
Inc., Dragados Construction USA, Inc., Dragados USA
Inc., El Sol Contracting and Construction Corporation,
Forest City Commercial Construction co., Inc., Forest
City Ratner Companies, LLC, Gotham Construction
Company, LLC, Halmar Construction Corp., Judlau
Contracting, Inc., Judlau Enterprises, LLC, Lend Lease
(US) Construction LMB Inc., Monadnock Construction,
Inc., Shiavone Construction Co. LLC, Skanska USA Inc.,
Skanska Inc., Solera Construction Inc., Sorbara Construction
Corp., Tishman Construction Corporation of Manhattan,
Tishman Construction Corporation of New York, Tishman
Construction Corporation, Turner Construction Company,
Yonkers Contracting Company, Inc.,

Defendants.

-----X

Defendant, DCM ERECTORS, INC., by its attorneys, GARBARINI & SCHER, P.C., as and
for its Answer to plaintiff's First Amended Complaint, upon information and belief, states as
follows:

JURISDICTION AND VENUE

FIRST: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated “1” of the First Amended Complaint.

SECOND: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “2” and “3” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

THE PARTIES

THIRD: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “4”, “5”, “6”, “7”, “8”, “10”, “11”, “15”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28”, “29”, “31”, “32”, “33”, “34”, “35”, “36” and “37” of the First Amended Complaint.

FOURTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “9”, “12” and “13” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

FIFTH: Denies each and every allegation contained in paragraphs designated “30” of the First Amended Complaint.

CLASS ALLEGATIONS

SIXTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “38”, “39”, “40”, “41”, “46” and “47” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

SEVENTH: Denies each and every allegation contained in paragraph designated “44” of the First Amended Complaint.

EIGHTH: Denies each and every allegation contained in paragraphs designated “42”, “43 (a)-(f)”, “45” and “48” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

FACTS

NINTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “51”, “52”, “53”, “54”, “59”, “60”, “61”, “62”, “63”, “64”, “65”, “66”, “74”, “75”, “76”, “77”, “78”, “79”, “80”, “81”, “82”, “83”, “84”, “87”, “88”, “89”, “90”, “91”, “92”, “93”, “94”, “96”, “97”, “98”, “107”, “108” and “109” of the First Amended Complaint.

TENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated “55” of the First Amended Complaint and begs leave to refer to the constitution and by-laws of Local 14.

ELEVENTH: Denies each and every allegation contained in paragraphs designated “49”, “68”, “69”, “70”, “71”, “72”, “73”, “85”, “86”, “95”, “99”, “100”, “101”, “102”, “103”, “104”, “105”, “106”, “110”, “113”, “114”, “115”, “116”, “117” and “118” of the First Amended Complaint.

TWELFTH: Denies each and every allegation contained in paragraphs designated “50”, of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

THIRTEENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “56”, “57”, “58” and “67” of the First Amended Complaint and begs leave to refer to the Collective Bargaining Agreement (hereinafter “CBA”) with industry trade groups.

FOURTEENTH: Denies each and every allegation contained in paragraphs designated “111” and “112” of the First Amended Complaint and begs leave to refer to the CBA.

FIFTEENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “119”, “133”, “147”, “148”, “153”, “154”, “155” and “156” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

SIXTEENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraphs designated “120”, “121”, “123”, “124”, “125”, “126”, “127”, “128” and “129” of the First Amended Complaint.

SEVENTEENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated “122” of the First Amended Complaint and begs leave to refer to CBA.

EIGHTEENTH: Denies any knowledge or information sufficient to form an opinion or belief as to the allegations contained in paragraph designated “130” of the First Amended Complaint and begs leave to refer to publically published census records.

NINETEENTH: Denies each and every allegation contained in paragraphs designated “131”, “132”, “135”, “136”, “138”, “139”, “140”, “141”, “142”, “143”, “144”, “145”, “146”, “149”, “151”, “152”, “157” and “158” of the First Amended Complaint.

TWENTIETH: Denies each and every allegation contained in paragraph designated “134” of the First Amended Complaint and begs leave to refer all questions of law and fact to the trial of the action.

TWENTY-FIRST: Denies each and every allegation contained in paragraph designated “137” of the First Amended Complaint and begs leave to refer to the CBA.

TWENTY-SECOND: Denies each and every allegation contained in paragraph designated “150” of the First Amended Complaint and begs leave to any and all contracts.

FIRST CLAIM

TWENTY-THIRD: Denies each and every allegation contained in paragraphs designated “159” and “160” of the First Amended Complaint.

SECOND CLAIM

TWENTY-FOURTH: Denies each and every allegation contained in paragraphs designated “161” and “162” of the First Amended Complaint.

THIRD CLAIM

TWENTY-FIFTH: Denies each and every allegation contained in paragraphs designated “163” and “164” of the First Amended Complaint.

FOURTH CLAIM

TWENTY-SIXTH: Denies each and every allegation contained in paragraphs designated “165” and “166” of the First Amended Complaint.

FIFTH CLAIM

TWENTY-SEVENTH: Denies each and every allegation contained in paragraphs designated “167” and “168” of the First Amended Complaint.

SIXTH CLAIM

TWENTY-EIGHTH: Denies each and every allegation contained in paragraphs designated “169” “170” and “171” of the First Amended Complaint.

SEVENTH CLAIM

TWENTY-NINTH: Denies each and every allegation contained in paragraphs designated “172” “173” and “174” of the First Amended Complaint.

EIGHTH CLAIM

THIRTIETH: Denies each and every allegation contained in paragraphs designated “175”, “176” and “177” of the First Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

THIRTY-FIRST: The First Amended Complaint fails to state a claim upon which relief may be granted as against the answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRTY-SECOND: The First Amended Complaint is barred in whole or in part by the applicable statute of limitations and/or filing period.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

THIRTY-THIRD: Upon information and belief, plaintiffs have failed to mitigate their alleged damages, any entitlement to which is expressly denied.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: The First Amended Complaint is barred insofar as it relates to events which occurred or are alleged to have occurred more than 300 days prior to the filing of a charge with the Equal Employment Opportunity Commission (hereinafter “EEOC”).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTY-FIFTH: The employment actions at issue were taken for legitimate, non-discriminatory reasons by answering defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

THIRTY-SIXTH: The employment actions at issue were taken in good faith, and without malice by the answering defendant.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

THIRTY-SEVENTH: All actions taken by answering defendant were consistent with the terms of the CBA.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: Plaintiffs’ claims are barred in whole or in part by their failure to exhaust the contractual grievance-arbitration procedure of the CBA.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

THIRTY-NINTH: Answering defendant did not breach any duty owed to plaintiffs.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

FORTIETH: The claims asserted against answering defendant in the First Amended Complaint are barred, in whole or in part, because answering defendant has established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory and harassing practices.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

FORTY-FIRST: Upon information and belief, plaintiffs' claims are barred by virtue of their failure to exhaust their administrative remedies prior to bringing this action.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

FORTY-SECOND: Plaintiffs fail to state a claim upon which an award of injunctive relief may be granted.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

FORTY-THIRD: Plaintiffs fail to state a claim upon which punitive damages may be granted.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

FORTY-FOURTH: Plaintiffs fail to state a claim upon which an award of attorneys' fees may be granted.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

FORTY-FIFTH: Upon information and belief, plaintiffs are barred from asserting their claims in the First Amended Complaint by reason of the equitable doctrine of laches as against the answering defendant.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

FORTY-SIXTH: If any damages or losses were sustained by plaintiffs, such damages or losses were caused or contributed to by plaintiffs' own actions, inactions, fault, lack of diligence or failure to mitigate any of their alleged damages, and not by actions or inactions of answering defendant.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

FORTY-SEVENTH: Upon information and belief, plaintiffs' claims are barred by the doctrine of unclean hands and stem from plaintiffs' own acts of wrong-doing.

AS AND FOR EIGHTEENTH AFFIRMATIVE DEFENSE

FORTY-NINTH: Plaintiffs have not suffered any damages as a result of any possible act or omission of the answering defendant.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

FIFTIETH: Defendant, DCMERECTORS, INC., did not breach any duties or obligations of any kind, either expressed or implied, whether arising from common law, statute, contract or otherwise.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

FIFTY-FIRST: Plaintiffs' claims are pre-empted by the Labor Management Relations Act.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

FIFTY-SECOND: Upon information and belief, plaintiffs' damages stem from their own violation of the International Union of Operating Engineers Constitution, defendant Local 14's Bylaws and/or applicable CBA.

TO:
OFFICE OF MICHAEL G. O'NEILL
30 Vesey Street, Suite 301
New York, NY 10007
Attorneys for Plaintiffs
(212) 581-0900

GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE
One Gateway Center
Newark, NJ 07102
Attorneys for Defendant
LEND LEASE (US) CONSTRUCTION LMB, INC.
(973) 596-4829

VIRGINIA & AMBINDER
111 Broadway
New York, NY 10006
Attorneys for Defendant
MONADNOCK CONSTRUCTION, INC.
(212) 943-9080

PROSKAUER ROSE LLP
One Newark Center
Newark, NJ 07102
Attorneys for Defendant
FOREST CITY COMMERCIAL CONSTRUCTION CO., INC.
(973) 274-3200

GORDON & REES LLP
One Liberty Plaza, 23rd Floor
New York, NY 10006
Attorneys for Defendant
JUDLAU CONTRACTING, INC.
(212) 201-6777

JACKSON LEWIS LLP
58 South Service Road, Suite 410
Melville, NY 11747
Attorneys for Defendant
SKANSKA, INC.
(631) 247-4619

PITTA AND GIBLIN LLP
120 Broadway, 28th Floor
New York, NY 10271
Attorneys for Defendant
INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 14-14B, AFL-CIO
(212) 652-3883

SEYFARTH SHAW
620 Eighth Avenue
New York, NY 10018
Attorneys for Defendant
DRAGADOS CONSTRUCTION USA, INC.
(212) 218-5507

KAUFF, McGUIRE & MARGOLIS LLP
950 Third Avenue, 14th Floor
New York, NY 10022
Attorneys for Defendant
TURNER CONSTRUCTION COMPANY
(212) 644-1010
JACKSON LEWIS LLP
One North Broadway
White Plains, NY 10601
Attorneys for Defendant
YONKERS CONTRACTING COMPANY, INC.
(914) 328-0404

WINGET, SPADAFORA & SCHWARTZBERG, LLP
45 Broadway, 19th Floor
New York, NY 10006
Attorneys for Defendant
SCHIAVONE CONSTRUCTION CO., LLC
(212) 221-6900